IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION No. 12318 of 2005

Between:

K. Lalitha Kumari, D/o Satyanarayana
Business, R/o D.No. 6/141, Pentapadu village and Mandal,
West Godavari District.

..... PETITIONER

AND

1 The District Collector and the Auctioning Authority.

West Godavari District at Eluru.
2 The Deputy Commissioner for Prohibition and Excise,

Kakinada, East Godavari District.
3 The Prohibition and Excise Superintendent, Eluru,

West Godavari District.
4 Rudraraju Bangaru Raju, S/o Seetharama Raju,
R/o Bathapudivari street,Pentapadu village and Mandal,

West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the action of the 1st respondent in accepting the tender of the 4th respondent in respect of Shop No. 75 of Pentapadu village and mandal, West Godavari District in the auction held on 2-6-2005 pursuant to the tender notice No. 40/2005 dated 26-5-2005 as illegal, arbitrary and contrary to the rules and consequently direct the 1st respondent to consider the tender of the petitioner for IL 24 shop at Pentapadu village and mandal, West Godavari district and pass such further or other orders as the Hon'ble Court feels deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondent Nos.1 to 3: GP FOR PROHIBITION & EXCISE

Counsel for the Respondent No.4: SRI Y.V.RAVI PRASAD

The Court at the stage of admission made the following:

ORDER:

Heard Sri O.Manohar Reddy, the learned counsel for the petitioner and the learned Government Pleader for Prohibition and Excise for respondents 1 to 3 and Sri Y.V.Ravi Prasad, the caveator for the

4th respondent.

The petitioner and the 4th respondent participated in the tenders held on 02.06.2005 for auction of an IL-24 license for shop No.75 of Pentapadu village of Pentapadu mandal. Admittedly, the

4th respondent's bid was the highest while the petitioner's was the second highest bid. On 02.06.2005 the petitioner claims to have orally represented to the concerned authorities i.e. the 1st respondent that the 4th respondent had filed an insolvency petition on the file of the Court of the Principal Senior Civil Judge, West Godavari District Eluru, being I.P.No.89/2003 and that the Form A-2 statement of particulars of the 4th respondent's immovable properties (submitted along with his bid) are at variance and inconsistent with the statement of property particulars furnished by the 4th respondent in I.P.No.89/2003, and that in the circumstances the bid of the 4th respondent, despite being highest ought not to be accepted for consideration. On 03.06.2005 the petitioner claims to have made a written representation of the same to the

1st respondent. Eventually, however, on a consideration of the higher bid of the 4th respondent, the license was granted to him to operate shop No.75 for the current excise year. The petitioner contends that the 1st respondent failed to exercise the

residuary discretion available under the 5th proviso to Rule 14 (6) of the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, which are the relevant rules governing auction of the IL-24 licenses issued in G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24.05.2005. The proviso reads as under:

> "Provided also that it shall be open to the auctioning authority to refuse to knock down the auction in favour of the highest tenderer if such authority is satisfied after a perusal of the affidavit that such tenderer cannot reasonably be expected to discharge his/her liabilities in terms of the lease."

Rule 8(g) of the said Rules enacts that a person who is adjudged as an insolvent by a competent Court is not eligible to participate in the auction. It is not the asserted or established case of the petitioner that the 4th respondent has been adjudged as an insolvent. What is contended is that in the statement of assets and liabilities furnished to the insolvency Court in I.P.89/2003, the petitioner did not mention any movable properties as owned by him and he furnished merely a list of some liquor bottles of a value of Rs.2 lakhs, the particulars in the list substantiated by the pleading in paragrah-6 of the I.P., whereas in the Form A-2 certificate furnished by him along with his bid, he mentioned property which does not find mention in the I.P. This discrepancy in the petitioner's furnishing of properties vis-à-vis what has been stated by him in I.P.89/2003 ought to have activated the discretion of the 1st respondent, available under proviso 5 to Rule 14(6) and guided the 1st respondent to decline accepting the higher bid of the 1st respondent, is the substance of the petitioner's contention.

The learned Government Pleader and the 4th respondent are conjoint in denying this construction of the discretion of the 1st respondent qua the 5th proviso Rule 14(6) as suggested by the petitioner. It is the contention on behalf of these respondents that Rule 6 (2) of the Rules requires a notarized affidavit in Form A-2 containing the particulars of a bidders' immovable property and the present market value thereof and encumbrances existing if any disclosing any necessary particulars thereof, for an amount not less than one lakh rupees or a Bank Guarantee for an equal amount. The minimum value of the immovable property that should be shown is rupees one lakh and this is so as per Rule-6. Since the entire license amount that is receivable by the Government on the

grant of license is recovered in advance and is also safeguarded by bank guarantee and deposits. The property statement furnished in Form A-2 is by way of an additional security *ex abundanti cautela,* is the submission on behalf of the respondents and therefore the discretion and the satisfaction that is required by the 1st respondent in terms of the 5th proviso to Rule 14(6) should not be extended beyond the rational purposes of the rule is the contention.

The 1st respondent in evaluating the bids for identifying persons who should properly be granted a license does not have charter to go into every aspect of a bidder's personality. In terms of the provisions of the 5th proviso to Rule 14 (6), the 1st respondent is required to additionally consider after a bidder satisfies the eligibility criteria provided in Rule-8, the properties statements that are required furnished by bidder in Form A-2 as one of the several aspects that should be taken into consideration by the 1st respondent in coming to the satisfaction, warranted by the 5th proviso of Rule 14(6) and that factor should be construed in its context.

Under the Rules for grant of IL-24 license, the entire license amount is required to be paid in advance for the entire excise year. The property statement that is required to be furnished in Form A-2 qua
Rule 6 is thus, in the nature of an additional security to cater to any unforeseen liabilities that the licensee may incur during the period of operation of the license. The substantial revenues that the State would derive from the grant of license are secured by advance collection. In the context, the value that is required to be put by the 1st respondent on the particulars under Form A-2 do not assume a critical component of the satisfaction as to whether the highest bidder merely on the basis of the property disclosed in Form A-2 could be reasonably expected to discharge his liabilities under the terms of the license.

On the afore said analysis, in my considered view, the variance if any between the statement made by the 4th respondent before the insolvency Court in I.P.No.89/2003 and in Form A-2 filed along with the bid documents for grant of IL-24 license for the shop No.75 of Pentapadu village, *per se*, does not warrant an inference that the 1st respondent abdicated his statutory responsibility in arriving at the satisfaction that the 4th respondent could satisfy the terms of the license granted to him.

The Writ Petition, on the above analysis is without merits and is accordingly

dismissed. No order as to costs.

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GODA RAGHURAM,J

Dated: 01.07.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The District Collector and the

Auctioning Authority,

West Godavari District at Eluru

2. The Deputy Commissioner for

Prohibition and Excise,

Kakinada, East Godavari District

3. The Prohibition and Excise Superintendent,

Eluru, West Godavari District

4. Two CCs to the Government Pleader for

Prohibition and Excise, High Court Buildings,

Hyderabad (OUT)

5. Two CD copies

*Form-NIC-OGS/WP{**AVLR**}*